CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 66

THE UNITED STATES OF AMERICA, APPELLANT

vs.

HARRY M. WURZBACH

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS

FILED APRIL 18, 1929

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 66

THE UNITED STATES OF AMERICA, APPELLANT

vs.

HARRY M. WURZBACH

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS

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1 [Caption omitted.]

2 In United States District Court, Western District of Texas, Waco Division

February term, 1929

Presentment

Filed Feb. 27, 1929; filed at San Antonio Division Mar. 1, 1929

Now, on this the 27th day of February, A. D. 1929, came into open court the grand jury heretofore empaneled, and the roll being called, and a quorum thereof being present, they, through their foreman, A. C. Patton, presented to the court the following indictment: No. 2420. The United States *vs.* Harry M. Wurzbach, an indictment for receiving contributions for political purposes from United States employees and being concerned in receiving such contributions, which was received by the court and ordered to be filed and docketed.

[File indorsement omitted.]

3 In United States District Court at Waco

Indictment

Filed Feb. 27, 1929; filed at San Antonio Division Mar. 1, 1929

In the name and by the authority of the United States of America comes our grand jury of the United States of America and the Western District of Texas, and the Waco Division thereof, and being first duly selected, tried, empanelled, sworn, and charged, upon their oaths in open court do present:

That heretofore, to wit, on or about the 28th day of June, A. D. 1926, in the counties of Guadalupe and Bexar, the exact county being to your grand jurors unknown, in the State of Texas, Western District of Texas, and San Antonio Division thereof, and within the jurisdiction of this court, one Harry M. Wurzbach, being then and there a Representative in Congress of the United States of America from the fourteenth congressional district of Texas, did then and there unlawfully, knowingly, and feloniously receive from one H. M. Holden, the said H. M. Holden then and there being an officer of the United States, to wit, a duly appointed, qualified, and acting United States attorney for the Southern District of Texas, the sum of one hundred dollars ($100.00), the said sum of one hundred dollars ($100.00) so received by the said Harry M. Wurzbach, as aforesaid, being then and there a contribution received for a political purpose, that is, for the purpose of promoting the candidacy of the said Harry M. Wurzbach for the nomination in the Republican primaries held on the 24th day of July, 1926, for the office of Representative in Congress of the United States of America from the

fourteenth congressional district of Texas; the said Harry M. Wurzbach at the time of receiving said one hundred dollars ($100.00), as aforesaid, then and there well knew that the said H. M. Holden was an officer of the United States, as aforesaid, and the said Harry M. Wurzbach, at the time of receiving said sum of one hundred dollars ($100.00), well knew that the said sum of money was a contribution received for political purposes, as aforesaid.

4 Contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Second count

And your grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to wit, on or about the 28th day of June, A. D. 1926, in the counties of Guadalupe and Bexar, the exact county being unknown to your grand jurors, in the State of Texas, Western District of Texas and San Antonio Division thereof, and within the jurisdiction of this court, one Harry M. Wurzbach, being then and there a Representative in Congress of the United States of America from the fourteenth congressional district of Texas, was then and there unlawfully, knowingly, and feloniously concerned in receiving from one H. M. Holden, the said H. M. Holden then and there being an officer of the United States, to wit, a duly appointed, qualified and acting United States attorney for the Southern District of Texas, the sum of one hundred dollars ($100.00), the said sum of one hundred dollars ($100.00), of which the said Harry M. Wurzbach was concerned in receiving as aforesaid, being then and there a contribution received for a political purpose, that is, for the purpose of promoting the candidacy of the said Harry M. Wurzbach for the nomination in the Republican primaries held on the 24th day of July, 1926, for the office of Representative in Congress of the United States of America from the fourteenth congressional district of Texas, the said Harry M. Wurzbach at the time of being concerned in the receiving of said one hundred dollars ($100.00), as aforesaid, then and there well knew that the said H. M. Holden was an officer of the United States, as aforesaid, and the said Harry M. Wurzbach, at the time of being concerned in the receiving of said sum of one hundred dollars ($100.00) well knew that said sum of money was a contribution received for political purposes, as aforesaid.

Contrary to the form of the statute in such cases made and
5 provided, and against the peace and dignity of the United States of America.

Third count

And your grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to wit, on or about the 8th day of July, A. D. 1926, in the county of Bexar, State of Texas, Western District of

Texas, San Antonio division thereof, and within the jurisdiction of this court, one Harry M. Wurzbach, being then and there a Representative in Congress of the United States of America from the fourteenth congressional district of Texas, did then and there unlawfully, knowingly, and feloniously receive from one H. F. Geyer, an employee of the United States of America, to wit, a duly appointed, qualified, and acting railway postal clerk, and being a person receiving compensation for service from money derived from the Treasury of the United States, and being an employee of the Post Office Department of the United States of America, the sum of twenty-five dollars ($25.00), the said sum of twenty-five dollars ($25.00) so received by the said Harry M. Wurzbach, as aforesaid, being then and there a contribution received for a political purpose—that is, for the purpose of promoting the candidacy of the said Harry M. Wurzbach for the nomination in the Republican primaries held on the 24th day of July, 1926, for the office of Representative in Congress of the United States of America from the fourteenth congressional district of Texas—the said Harry M. Wurzbach at the time of receiving said twenty-five dollars ($25.00), as aforesaid, then and there well knew that the said H. F. Geyer was an employee of the United States, as aforesaid, and the said Harry M. Wurzbach at the time of receiving said sum of twenty-five dollars ($25.00) well knew that said sum of money was a contribution received for political purposes, as aforesaid.

Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

6 Fourth count

And your grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to wit, on or about the 8th day of July, A. D. 1926, in the county of Bexar, State of Texas, Western District of Texas, and San Antonio division thereof, and within the jurisdiction of this court, one Harry M. Wurzbach, being then and there a Representative in Congress of the United States of America from the fourteenth congressional district of Texas, was then and there unlawfully, knowingly, and feloniously concerned in receiving from one H. F. Geyer, the said H. F. Geyer then and there being an employee of the United States of America, to wit, a duly appointed, qualified, and acting railway postal clerk, and being a person receiving compensation for service from money derived from the Treasury of the United States, and being an employee of the Post Office Department of the United States of America, the sum of twenty-five dollars ($25.00), the said sum of twenty-five dollars ($25.00), of which the said Harry M. Wurzbach was concerned in receiving as aforesaid, being then and there a contribution received for a political purpose—that is, for the purpose of promoting the candidacy of the

said Harry M. Wurzbach for the nomination in the Republican primaries held on the 24th day of July, 1926, for the office of Representative in Congress of the United States of America from the fourteenth congressional district of Texas—the said Harry M. Wurzbach at the time of being concerned in the receiving of said twenty-five dollars ($25.00), as aforesaid, then and there well knew that the said H. F. Geyer was an employee of the United States, as aforesaid, and the said Harry M. Wurzbach at the time of being concerned in the receiving of said sum of twenty-five dollars ($25.00) well knew that said sum of money was a contribution received for political purposes, as aforesaid.

Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

7 Fifth count

And your grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to wit, on or about the 8th day of July, A. D. 1926, in the county of Bexar, State of Texas, Western District of Texas, San Antonio Division thereof, and within the jurisdiction of this court, one Harry M. Wurzbach, being then and there a Representative in Congress of the United States of America from the fourteenth congressional district of Texas, did then and there unlawfully, knowingly, and feloniously receive from one Ernest J. Keudell, the said Ernest J. Keudell then and there being an employee of the United States of America, to wit, a duly appointed, qualified, and acting railway postal clerk, and being a person receiving compensation for service from money derived from the Treasury of the United States, and being an employee of the Post Office Department of the United States of America, the sum of fifty dollars ($50.00), the said sum of fifty dollars ($50.00) so received by the said Harry M. Wurzbach as aforesaid, being then and there a contribution received for a political purpose, that is, for the purpose of promoting the candidacy of the said Harry M. Wurzbach for the nomination in the Republican primaries held on the 24th day of July, 1926, for the office of Representative in Congress of the United States of America from the fourteenth congressional district of Texas; the said Harry M. Wurzbach at the time of receiving said fifty dollars ($50.00) as aforesaid, then and there well knew that the said Ernest J. Keudell was an employee of the United States, as aforesaid, and the said Harry M. Wurzbach, at the time of receiving said sum of fifty dollars ($50.00) well knew that said sum of money was a contribution received for political purposes, as aforesaid.

Contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

8

Sixth count

And you grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to wit, on or about the 8th day of July, A. D. 1926, in the county of Bexar, State of Texas, Western District of Texas and San Antonio Division thereof, and within the jurisdiction of this court, one Harry M. Wurzbach, being then and there a Representative in Congress of the United States of America from the fourteenth congressional district of Texas, was then and there unlawfully, knowingly, and feloniously concerned in receiving from one Ernest J. Keudell, the said Ernest J. Keudell then and there being an employee of the United States of America, to wit, a duly appointed, qualified, and acting railway postal clerk, and being a person receiving compensation for service from money derived from the Treasury of the United States, and being an employee of the Post Office Department of the United States of America, the sum of fifty dollars ($50.00), the said sum of fifty dollars ($50.00) of which the said Harry M. Wurzbach was concerned in receiving, as aforesaid, being then and there a contribution received for a political purpose, that is for the purpose of promoting the candidacy of the said Harry M. Wurzbach for the nomination in the Republican primaries held on the 24th day of July, 1926, for the office of Representative in Congress of the United States of America from the fourteenth congressional district of Texas; the said Harry M. Wurzbach at the time of being concerned in the receiving of said fifty dollars ($50.00), as aforesaid, then and there well knew that the said Ernest J. Keudell was an employee of the United States, as aforesaid, and the said Harry M. Wurzbach, at the time of being concerned in the receiving of said sum of fifty dollars ($50.00) well knew that said sum of money was a contribution received for political purposes, as aforesaid.

Contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States
9 of America.

(Signed) A. C. PATTON,
Foreman of the Grand Jury.

[File indorsement omitted.]

10 In United States District Court, Western District of Texas, Waco Division

No. 2420 Cr.

THE UNITED STATES VS. HARRY M. WURZBACH

Order fixing bond

February 27, 1929

The defendant herein not being in arrest, it is ordered by the court that instanter capias, returnable to the San Antonio division of the court, forthwith issue for said defendant.

It is further ordered that bond for the appearance of said defendant instanter before this court at San Antonio, Texas, be, and the same is hereby, fixed at the sum of two thousand five hundred ($2,500.00) dollars, which said bond may be taken and approved by any United States commissioner within the district.

In United States District Court at Waco

[Title omitted.]

Order transferring cause

Filed Mar. 1, 1929

Upon application of the United States attorney, the clerk of this court is directed to transfer the above entitled and numbered cause from Waco, within the Waco division of this district, to San Antonio, within the San Antonio division of this district, for trial.

Ordered at Waco, Texas, on this the 27th day of February, A. D. 1929.

CHARLES A. BOYNTON,
United States District Judge.

11 [Clerk's certificate to foregoing papers omitted in printing.]
[File indorsement omitted.]

12 In United States District Court for the Western District of Texas, San Antonio Division

No. 7638 Criminal

THE UNITED STATES, PLAINTIFF

vs.

HARRY M. WURZBACH, DEFENDANT

Motion to quash indictment

Filed March 13, 1929

To the Honorable DUVAL WEST, Judge of said court:

Now comes HARRY M. WURZBACH, defendant in the above entitled and numbered cause, and respectfully moves the court for a judgment quashing and setting aside counts one, two, three, four, five, and six of the indictment in said cause, being all the counts thereof, for the following reason, to wit:

Because in none of said counts of said indictment do the acts charged against the defendant constitute a violation of any law of the United States.

Wherefore defendant prays that upon a hearing of this motion judgment be entered quashing and setting aside said indictment and dismissing said cause.

(Signed) HUGH R. ROBERTSON,
W. A. WURZBACH,
C. W. ANDERSON,
Attorneys for Defendant.

[File indorsement omitted.]

I hereby acknowledge and accept service of a copy of this motion, this 13 day of March, A. D. 1929.

(Signed) JOHN D. HARTMAN,
United States Attorney.

13 In United States District Court

[Title omitted.]

Order sustaining motion to quash indictment

Filed Mar. 23, 1929

On this the 23rd day of March, A. D. 1929, came on for final hearing and determination the defendant's motion to quash the indictment in this cause upon the grounds set out in said motion, and the court, after having heard the motion, together with the arguments of counsel thereon, is of the opinion that said motion should be sustained on the grounds that the words "for any political purpose whatever," as used in section 208 of the United States Criminal Code Annoted, were not intended by Congress to include the political purpose named in the indictment, which reads as follows:

"for the purpose of promoting the candidacy of the said Harry M. Wurzbach for the nomination in the Republican primaries held on the 24th day of July, 1926, for the office of Representative in Congress of the United States of America from the fourteenth congressional district of Texas,"

and if Congress did intend that the words "for any political purpose whatever" should cover the political purpose mentioned in the indictment, then that the statute in question to that extent is probably unconstitutional, and

It is therefore ordered, adjudged, and decreed by the court that the defendant's motion to quash the indictment in this cause be, and the same is hereby, sustained and the indictment dismissed, to which ruling and order of the court the United States by its district attorney then and there in open court excepted and gave notice of appeal to the United States Supreme Court. Signed after interlineation of the word "probably."

(Signed) DUVAL WEST,
United States District Judge.

O. K. H. R. ROBERTSON,
Atty. for Defendant.

[File indorsement omitted.]

14 In United States District Court

[Title omitted.]

Opinion

Filed April 3, 1929

Hearing on demurrer to indictment

Opinion of the court:

There are six counts in the indictment for violations of sec. 208, Criminal Code, Title 18, U. S. C. A.—three for "receiving money for a political purpose" and three for "being concerned in receiving money for a political purpose." The demurrer affirms that the indictment is defective because it fails to state an offense against any law of the United States.

Omitting portions not pertinent to the inquiry raised by the demurrer, the section makes it unlawful for a Representative in Congress to receive, or be concerned in receiving, from an officer of the United States, any contribution for any political purpose whatever. The questioned portion of the indictment in substance charges that the defendant, while a Representative in Congress, received from a named officer of the Government a definite sum of money, being a contribution received by defendant for a political purpose; that is to say, for the purpose of promoting his candidacy for the nomination in the Republic primaries held on July 24th, 1926, for the office of Representative in the National Congress from the fourteenth congressional district of Texas; the defendant having knowledge of the official capacity of the officer, and at the time of receiving said money, well knew that it was contributed by said officer for the political purpose mentioned, contrary to the statute.

15 This indictment sets out the words of the statute, and likewise clearly states the political purpose for which the contribution was made. Chief Justice Taft, sitting as a circuit judge, held that an offense stated in the words of this statute is sufficient. U. S. v. Scott, 74 Fed. 210 (1895).

Political rights and political purposes are nearly related.

"'Political rights' consist in the power to participate, directly or indirectly, in the establishment or management of the Government. These political rights are fixed by the Constitution. Every citizen has the right of voting for public officers and of being elected. These are the political rights which the humblest citizen possesses." (2nd Bouvier Law Dictionary; Anthony v. Burrows, 129 Fed. 783.)

The promotion of one's candidacy for nomination for the office of Representative in Congress is an exercise by the citizen of a political right. The receipt of money in furtherance of such an object is a contribution for a political purpose.

The Texas statutes regulating the nomination of candidates of political parties through primary elections are shown in chapter 13

of Vernon's Annotated Texas Civil Statutes (1925), volume 9, title 50—Elections, chapter 13—Nominations, page 85, being embraced in articles 3100 to 3167, inclusive. Article 3100 defines "primary election" to mean an election held by the members of an organized political party to nominate candidates to be voted for at a general or special election; 3101 provides that on primary election day in 1926, and every two years thereafter, candidates for governor and for all other State offices to be chosen by the vote of the entire State, and candidates for Congress and all district offices are to be chosen, * * * to be nominated by each organized political party that cast one hundred thousand votes or more, * * * shall be nominated in primary elections by the qualified voters of
16 such party; 3102, date of primary, fourth Saturday in July, 1926, and every two years thereafter shall be general primary election day, and primary elections to nominate candidates for a general election shall be held on no other day, except * * *. The remaining articles to include No. 3167 cover regulatory provisions pertinent to the chapter subject head.

The defendant contends that the words "for any political purpose whatever" should be interpreted to refer only to the political purposes of the Federal Government. The pertinent inquiry is—

The extent and power of Congress to alter the laws of a State which prescribes times, places, and manner of holding primary nominating elections by political parties of their district candidates for Representatives.

The source of power is found in Article I, sec. 4, of the Constitution, which provides:

"The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislatures thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

Speaking generally, laws are limited in their effect to the extent of physical territory dominated and also to the authority exercised by the sovereignty proclaiming them. The States and the Nation include the same physical territory, but their fields of legislation are made distinct and separate by the Constitution.

"The rights which candidates for nomination for the office of Senator of the United States may have in a State primary nominating election come wholly from the State law; and a conspiracy to deprive them of such rights by debauching the primary with illegal votes for an opposing candidate is not within the scope of section 19 of the Penal Code (now 51, title 18, U. S. C. A.), designed for the protection of rights and privileges secured by the Constitution or laws of the United States." United States v. Gradwell, 243 U. S. 476; Newberry v. United States, 256 U. S. 232.

"The power to control party primaries for designating candidates for the Senate is not within the grant of power 'to regulate the manner of holding elections' (Art. I, sec. 4)—neither within
17 the fair intendment of the words used nor the meaning

ascribed to them by the framers of the Constitution; it is not necessary in order to effectuate the power expressly granted (Art. I, sec. 8, cl. 18); and its exercise would interfere with purely domestic affairs of the States and infringe upon liberties reserved to the people." Newberry v. United States, supra, syllabus.

The ruling in the Newberry Case brought about repeal of the particular section 8 of the then existing "Federal corrupt practices act," in which Congress had provided for a regulation of the manner in which the States should conduct their primary nominating elections, upon the ground that the offending section 8 was in excess of the constitutional grant of power, and therefore void.

These two decisions definitely hold that the State nominating election primaries are wholly under State control. It is therefore a violation of Federal law for a Representative in Congress to receive from a Federal officer a contribution of money for State political purposes as distinguished from Federal?

Three essential Federal jurisdictional elements affirmatively appear in the indictment: (1) The receipt by a then Representative in the Congress of a contribution of money; (2) from an officer of the United States; (3) for a political purpose—that is, to promote the defendant's candidacy for nomination in the State primary election for Representative in Congress. It may be assumed that the Federal Government has authority to regulate, within reasonable bounds, the conduct of Representatives in Congress and its own officials and agents as to contributions for "Federal political purposes"; but what of its authority over them for "any political purposes whatever"?

The effect of this general description of an act the doing of which is declared to be a felony is to be ascertained by applying the tests of statutory construction. The following rule is declared:

"A criminal statute should define clearly the offense which it purports to punish, and that when so defined it should be within the limits of the power of the legislative body enacting it." United States v. Reese, 92 U. S. 214; Trade-Mark Cases, 100 U. S. 82; James V. Bowman, 190 U. S. 127.

18 The court in United States v. Reese, supra, referring to the effect of a penal statute enacted by Congress which in general terms was broad enough to cover wrongful acts without as well as within the constitutional grant of power, said:

"It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the Government. * * * To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty."

In the Trade-mark Cases, supra, the validity of the law to punish counterfeiting of trade-marks was questioned by demurrer to the indictment. The acts exercised a general control of trade-marks,

and the indictment stated the offense in general terms. The court held that the grant of power by the Constitution to Congress to control trade-marks was not general, but limited. It was suggested to the court that, since Congress was granted power to regulate trade-marks used in commerce with foreign nations and among the States, those statutes should be held valid as limited to that class of cases.

The court held:

"While it may be true that when one part of a statute is valid and constitutional, and another part is unconstitutional and void, the court may enforce the valid part where they are distinctly separable, so that each can stand alone, it is not within the judicial province to give to the words used by Congress a narrower meaning than they are manifestly intended to bear in order that crimes may be punished which are not described in language that brings them within the constitutional power of that body."

The cases cited and principles declared are convincing that the otherwise well-understood words "for any political purpose whatever" are ambiguous and uncertain in meaning as used in this statute. The act in question is highly penal, and because of ambiguity and uncertainty the rule of strict construction should be applied.

"In construing a penal statute all reasonable doubts concerning its meaning should operate in favor of the respondent. Where penalties are to be recovered, the proof must bring the transaction within both letter and spirit of the law, and usually show the plain breach of both." Harrison v. Vose, 9 Howard, 372.

19 Following the principles announced in the cases quoted, it is plain that the statute fails to clearly define the offense which it seeks to punish; nor do the objects and purposes of the act definitely appear to be within the limits of the enacting power of Congress.

The constitutional grant of power limited control of trade-marks to those used in commerce between foreign nations and among the States and Indian tribes. The major questions involved in the Trade-Mark Cases, supra, are found in the case at bar. There Congress had passed an act embracing control over all commerce, including that between citizens of the same State, and, further, declaring the counterfeiting of any trade-mark to be a criminal offense. The question before the court raised by general demurrers to indictments was whether Congress had the power to pass a general act when its power had been definitely limited. Here the act is infinite in extent. It affects "any political purpose whatever." The indictment specifies a particular political purpose which refers to a field of jurisdiction outside the power of Congress and in excess of the constitutional grant. The citation is a case in point by ruling authority. Following the words of the Great Court, this court "cannot give a narrower meaning to the words used by Congress than they are manifestly intended to bear in order that crimes may be punished which are not described in language that brings them within the constitutional power of that body," because the power attempted to be exercised by the Congress exceeds the power granted by the Constitution.

The like principle is declared in the Newberry Case, supra. There the questioned statute was held to be void as in excess of its constitutional grant of power. It is to be remembered that in this case the court held that the State nominating primary election was purely a State affair, and not the subject of regulation by Congress, because in excess of the constitutional grant of power.

20 From the foregoing premises the following conclusions result:

That the act in question being penal in character and uncertain and doubtful meaning, such doubts will be construed to the benefit of defendant.

That the political purpose specified in the indictment for which defendant is charged to have received is for a State political purpose and not a Federal one.

That section 208, Criminal Code, title 18, U. S. C. A., is expressed in general terms that embrace contributions for political purposes within the field of legislative authority, as well as outside thereof, and to the latter extent is probably unconstitutional.

The court therefore rules that the indictment is insufficient as a matter of law, and the demurrer urged thereto should be and is sustained. An order to this effect is already entered.

(Signed) DuVal West,
United States District Judge.

April 3rd, 1929.

[File indorsement omitted.]

21 In United States District Court

[Title omitted.]

Petition for appeal and order allowing same

Filed April 6, 1929

To the Honorable DuVal West,
Judge of said court.

Comes now the United States of America, by John D. Hartman, United States attorney in and for the Western District of Texas, and being aggrieved by the order of the court sustaining the motion to quash the indictment in the above entitled and numbered cause, said order having been entered on the 23rd day of March, A. D. 1929, and petitions this honorable court for an order allowing the United States of America to prosecute its appeal to the honorable Supreme Court of the United States, according to the laws of the United States in that behalf provided, for which your petitioner will ever pray.

(Signed) John D. Hartman,
United States Attorney for the Western District of Texas.

It is ordered that an appeal as prayed for in the above petition be and the same is hereby allowed the United States to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein sustaining the motion to quash the indictment, and it is further ordered that the United States be allowed thirty days from this date within which to file a transcript of the record with the clerk of the United States Supreme Court.

Ordered at San Antonio, Texas, on this the 4th day of April, A. D. 1929.

(Signed) DuVal West,
United States District Judge.

[File indorsement omitted.]

23 In United States District Court

[Title omitted.]

Assignments of error

Filed April 6, 1929

To the Honorable Duval West,
Judge of said court:

Comes now John D. Hartman, United States attorney for the Western District of Texas, and on behalf of the United States of America files the following assignments of error in the hearing of the motion to quash the indictment in the above-entitled and numbered cause, to wit:

First assignment of error

The court erred in sustaining the defendant's motion to quash the indictment in this cause on the ground that the words "for any political purpose whatever" as used in section 208 of the United States Criminal Code Annotated were not intended by Congress to include the political purpose named in the indictment, which reads as follows:

"for the purpose of promoting the candidacy of the said Harry M. Wurzbach for the nomination in the Republican primaries held on the 24th day of July, 1926, for the office of Representative in Congress of the United States of America from the fourteenth congressional district of Texas."

Second assignment of error

The court erred in sustaining the defendant's motion to quash the indictment in this cause on the ground that if the words "for any political purpose whatever" as used in section 208 of the United States Criminal Code Annotated were intended by Congress to cover

the political purpose described in the indictment which reads as follows:

"for the purpose of promoting the candidacy of the said Harry M. Wurzbach for the nomination in the Republican primaries held on the 24th day of July, 1926, for the office of Representative in
24 Congress of the United States of America from the fourteenth congressional district of Texas,"

then that the statute in question to that extent is probably unconstitutional.

Third assignment of error

The court erred in sustaining the defendant's motion to quash the indictment on the ground that the indictment does not charge the defendant with a violation of any law of the United States.

(Signed) JOHN D. HARTMAN,
United States Attorney for the Western District of Texas.

[File indorsement omitted.]

25–26 [Citation in usual form showing service on Hugh R. Robertson, filed April 6, 1929, omitted in printing.]

27 In United States District Court

[Title omitted.]

Præcipe for transcript of record

Filed April 6, 1929

To the Honorable D. H. HART,
U. S. District Clerk for the Western District of Texas.

An appeal having been allowed and ordered and in all things approved and in accordance with law in the above entitled and numbered cause, comes now the United States of America, by John D. Hartman, United States attorney for the Western District of Texas, and makes application for and requests that the transcript of record in this case on appeal include the following papers and documents, to wit:

1. Caption.
1a. Presentment.
2. Indictment.
3. Order transferring indictment.
4. Motion to quash the indictment.
5. Judgment of the court on the motion to quash the indictment.
6. Opinion of the court.
7. Assignments of error.
8. Petition for appeal.
9. Order allowing appeal, the citation, service, and return on appeal.

10. Order allowing thirty days in which to file transcript of record in the Supreme Court.

11. Præcipe for transcript.

(Signed) JOHN D. HARTMAN,
United States Attorney.

I hereby acknowledge receipt of copy of the above præcipe this 6th day of April, A. D. 1929.

(Signed) HUGH R. ROBERTSON,
Attorney of Record for Harry M. Wurzbach.

[File indorsement omitted.]

28 [Clerk's certificate to foregoing transcript omitted in printing.]

29 In Supreme Court of the United States

Statement of points upon which appellant relies and parts of record to be printed

Filed May 22, 1929

Statement

I

Pursuant to rule 13 of this court, appellant specifies the following points upon which it intends to rely in the above-entitled cause:

30 A. Section 312 of the act of February 28, 1925, c. 368, 43 Stat. 1073 (U. S. C. title 18, sec. 208), forbids a Representative in Congress from receiving or being concerned in receiving from Federal employees political contributions intended to be used for primary election purposes.

B. As so construed the statute is constitutional.

II

The entire record as filed should be printed.

WILLIAM D. MITCHELL,
Attorney General.
O. R. LUHRING,
Assistant Attorney General.
ALFRED A. WHEAT,
Special Assistant to the Attorney General.
HARRY S. RIDGELY,
Attorney.

MAY, 1929.

31 [File indorsement omitted.]

[Indorsement on cover:] File No. 34,154. W. Texas, U. S. D. C. Term No. 66. The United States of America, appellant, vs. Harry M. Wurzbach. Filed April 18th, 1929. File No. 34,154.

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